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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF NEVADA**

15 **CRISS L. ROGERS,**

16 Plaintiff,

17 v.

18 **C. R. BARD, INCORPORATED and BARD**
19 **PERIPHERAL VASCULAR, INCORPORATED,**

20 Defendants.
21

Case No. 2:19-cv-01581-APG-BNW

**STIPULATION AND [PROPOSED]
ORDER TO STAY DISCOVERY AND
ALL PRETRIAL DEADLINES**

22 Plaintiff Criss L. Rogers (“Plaintiff”) and Defendants C. R. Bard, Inc. and Bard Peripheral
23 Vascular, Inc. (“Defendants” and collectively with Plaintiff, the “Parties”), pursuant to Fed. R. Civ.
24 P. 26(c) and (d) and LR IA 6-1, respectfully request that this Court temporarily stay discovery and all
25 pretrial deadlines, as set forth in the revised Discovery Plan (Dkt. 54), until **April 27, 2021** while the
26 Parties finalize settlement documents. In support thereof, the Parties state as follows:

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1 1. This case was part of the Multi-District Litigation proceeding *In re: Bard IVC Filters*
2 *Product Liability Litigation*, pending before Senior Judge David Campbell of the District of
3 Arizona.

4 2. Plaintiff alleges experiencing complications following the implantation of a Bard
5 Inferior Vena Cava (“IVC”) filter, a prescription medical device. He has asserted three strict products
6 liability counts (manufacturing defect, information defect (failure to warn) and design defect), six
7 negligence counts (design, manufacture, failure to recall/retrofit, failure to warn, negligent
8 misrepresentation and negligence per se), two breach of warranty counts (express and implied), two
9 counts sounding in fraud (fraudulent misrepresentation and fraudulent concealment), an unfair and
10 deceptive trade practices count, and a claim for punitive damages.

11 3. Defendants deny the Plaintiff’s allegations.

12 4. After four years, the completion of general issue discovery, and the conduct of three
13 bellwether trials, Judge Campbell ordered that cases, which have not settled or are not close to settling,
14 be transferred or remanded to the appropriate jurisdictions around the country for case-specific
15 discovery and trial. As a part of that process, he established a “track” system, wherein certain cases
16 were placed on tracks either to finalize settlement paperwork, continue settlement negotiations, or be
17 remanded or transferred.

18 5. This case was transferred to this Court on August 20, 2019 because at the time it was
19 not close to settling. But, since that date, the Parties have engaged in further settlement discussions
20 to resolve this case and the those of other plaintiffs represented by Plaintiff’s counsel with cases
21 pending before other United States District Courts. The Parties initially reached a global settlement
22 which did not include the Plaintiff. However, after renewed settlement discussions, the Parties have
23 recently reached a settlement in principle in this case as well.

24 6. The settlement process is well underway, as Plaintiff has signed a release and provided
25 lien verification documents, but it is not yet completed. Accordingly, the Parties request that
26 this Court issue an order staying discovery and pretrial deadlines until **April 27, 2021** to allow the
27 Parties time to finalize settlement documents. This will prevent unnecessary expenditures of the

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1 Parties and judicial resources as well as place this case on a similar “track” as the MDL cases Judge
2 Campbell determined should continue settlement dialogue.

3 7. A district court has broad discretion over pretrial discovery rulings. *Crawford-El v.*
4 *Britton*, 523 U.S. 574, 598 (1998); *accord, Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1188-89
5 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc’y of Heating, Refrigerating & Air-Conditioning*
6 *Engineers, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014); *see also, Cook v. Kartridg Pak Co.*, 840 F.2d 602,
7 604 (8th Cir. 1988) (“A district court must be free to use and control pretrial procedure in furtherance
8 of the orderly administration of justice.”).

9 8. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the scope
10 of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement negotiations do
11 not automatically excuse a party from its discovery obligations, the parties can seek a stay prior to the
12 cutoff date. *Sofo v. Pan-American Life Ins. Co.*, 13 F.3d 239, 242 (7th Cir. 1994); *see also, Wichita*
13 *Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1993) (finding that a “trial judge’s
14 decision to curtail discovery is granted great deference,” and noting that the discovery had been
15 pushed back a number of times because of pending settlement negotiations).

16 9. Facilitating the efforts of parties to resolve their disputes weighs in favor of granting
17 a stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845, at *2-3 (D. Nev.
18 July 8, 2013), the parties requested a 60-day stay to facilitate ongoing settlement negotiations and
19 permit them to mediate global settlement. The Court granted the stay, finding the parties would be
20 prejudiced if required to move forward with discovery at that time and a stay would potentially
21 prevent an unnecessary complication in the case. *Id.* at *3. Here, the Parties have reached a settlement
22 in principle.

23 10. The Parties agree that the relief sought herein is necessary to handle the case in the
24 most economical fashion yet allow sufficient time to schedule and complete discovery if necessary,
25 consistent with the scheduling obligations of counsel. The relief sought in this stipulation is not being
26 requested for delay, but so that justice may be done.

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1 **WHEREFORE**, Plaintiff and Defendants respectfully request the Court's approval of this
2 stipulation to stay discovery and all pretrial deadlines until **April 27, 2021** to allow the Parties to
3 finalize settlement documents.

4 **IT IS SO STIPULATED.**

5 Respectfully submitted March 1, 2021.

7 FLEMING, NOLEN & JEZ, LLP

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8 By: /s/ Rand P. Nolen

By: /s/ Eric W. Swanis

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15 *Counsel for Plaintiff*

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19 ORDER

20 On the basis of good cause, IT IS ORDERED that the parties' stipulation is
21 GRANTED. IT IS FURTHER ORDERED that by April 27, 2021, the parties must either file
22 dismissal documents or a joint status report regarding the status of settlement.

23 **IT IS SO ORDERED**

24 **DATED:** 5:10 pm, March 05, 2021

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26 **BRENDA WEKSLER**
27 **UNITED STATES MAGISTRATE JUDGE**
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